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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,847	04/08/2002	Lewis Colman	6727/0K095	1207
7278	7590	10/16/2003	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			WEISS JR, JOSEPH FRANCIS	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 10/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,847

Applicant(s)

COLMAN ET AL.

Examiner

Joseph F Weiss Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 7. 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 2-11 & 13-22 are objected to because of the following informalities: After the phrase 'claim #' and before the term 'wherein' applicant inserts the conjunction "and" which is unnecessary and awkward, use of a comma and the phrase wherein is sufficient. Appropriate correction is required.

Furthermore, in regards to claim 3, line 2, "said first said end section" the second said is unnecessary.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 4-9 & 17-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 2 recites the limitation "the internal diameter" in 1. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 4 recites the limitation "the external wall" in 2. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 5 recites the limitation "the friction" in 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 6 recites the limitation "the internal diameter" in 3. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 7 recites the limitation "said endotracheal tube passage" in 3. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 15 recites the limitation "the interal diameter" in 3. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 16 recites the limitation "said endotracheal tube passage" in 3. There is insufficient antecedent basis for this limitation in the claim.

In regards to claims 8-9 & 17-18, last line what/who is "its"? does applicant mean "is operative to allow a breath waveform to pass through the passage essentially unaffected"?

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-7, 12-16 & 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Enzinger (DE 29811374U1).

In regards to claims 1 & 12, Enzinger discloses an airway adapter (see fig) having a first end section (11) for connecting to an e-tube adapter having an inner bore, said first end section having a passage formed therein, a second end section (12) for connecting to a ventilating tube connector, said second end section being in fluid communication with said first end section, a sampling port (13) intermediate said end section in fluid communication with said first end section and a tubular insert(with

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regards to claim 1) or a sleeve (with regards to claim 12) (5-9) with an internal bore (interior defined by 7 & 8) which slides axially in said passage.

In regards to claims 2 & 14, the internal bore of Enzinger discloses an internal bore with an internal diameter that gradually increases towards an end of the insert near the sampling port such that the internal bore becomes essentially equal to the internal diameter of said passage.

In regards to claim 3, Enzinger discloses said insert having a projection adapted to abut against which provides an axial motion limit into said passage. (note interface of lip formed at 7-8 junction of insert with lip of sample port)

In regards to claim 4, Enzinger discloses the projection comprising a lip on an external wall of said insert.

In regards to claim 5, Enzinger discloses an outer wall of said insert as having a surface profile such that friction between said insert and said passage prevents free sliding of said insert in said passage. (see the fig)

In regards to claim 13, Enzinger discloses the use of a spring (6) that is operative to push the sleeve axially in a direction away from said sampling port.

In regards to claims 6 & 15, the internal bore of said insert that is distant from the sample port has an internal diameter essentially equal to an internal diameter of said inner bore of said endotracheal tube adapter "thereby" providing a virtually smooth-walled passage from said inner bore of said endotracheal tube adapter to the internal bore of said insert.

In regards to claims 7 & 16, Enzinger discloses said insert distant from the sampling port abutting against an end of an inner bore an endotracheal tube passage such that the intended result of "virtual" (i.e. substantial but not complete) elimination of void volume between said inner bore and the endotracheal tube adapter and said internal bore results.

In regards to claim 21, Enzinger discloses the use of pliant materials to make the device, to include the materials used to make any of the elements of claim 1 that might be the sleeve applicant is claiming.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 8-11 & 17-20 & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enzinger

In regards to claim 8-9 & 17-18, Enzinger discloses all the structure of the instantly claimed invention, but does not expressly state the intended result of not virtually affecting any passing waveform, i.e. it does not substantial alter a waveform, however by having all the structure as set forth by applicant, the device of Enzinger would be appreciated by one of ordinary skill in the art to be fully capable of achieve the same intended result of not altering a waveform as it passes through the device.

In regards to claims 10 & 19, Enzinger substantially discloses the instant application's invention, but does not expressly disclose that the elimination of void volume is effective independent of a relative position in which the endotracheal tube adaptor and the airway adapter are mated. It is noted that applicant's specification does not set forth this operative feature, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art. Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patentably distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

In regards to claims 11 & 20, Enzinger discloses the sample port having an opening that is radially distant from the walls of the passage, but does not disclose a plurality of openings, i.e. duplication of a known part for a known purpose.

It is noted that applicant's specification does not set forth this duplication of a known part for a known purpose, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patentably distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

In regards to claim 22, discloses all the structure of the instantly claimed invention, but does not expressly state the intended result/ability of nullifying the effects of different internal diameters and lengths of various endotracheal tube adaptors, however by having all the structure as set forth by applicant, the device of Enzinger

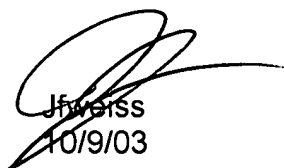
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would be appreciated by one of ordinary skill in the art to be fully capable of achieve this same intended result. It is noted that applicant's specification does not set forth this operative feature, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art. Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

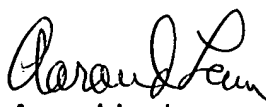
Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6516803, 6026810, 5636625, 4052990, 3461877; WO 93/25261; DE 198 38 370 C1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F Weiss Jr. whose telephone number is 703-305-0323. The examiner can normally be reached on M-F, 8-4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Jf Weiss
10/9/03



Aaron J. Lewis
Primary Examiner